IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8816 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMABEN NANJIBHAI KOLI

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 8816 of 2002

MR PRAVIN GONDALIYA for Petitioner No. 1

MR MK PATEL, AGP for Respondent No. 3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 21/03/2003

ORAL JUDGEMENT

#. By filing this petition the petitioner-detenu has challenged the detention order dated 12.8.2002, by which,

she is detained under the provisions of the Gujarat Prevention of Antisocial Activities Act, 1985 (for short "PASA") as a "bootlegger".

#. Along with the detention order, she was served with the grounds of detention of the same date. In the said grounds, there is a reference about four criminal cases, which are filed against the detenu under the Bombay Prohibition Act. The detaining authority, after having been satisfied about illegal activities of the detenu, has passed the aforesaid detention order. The said detention order is challenged by the petitioner-detenu on various grounds.

#. At the time of hearing of this petition, learned advocate for the petitioner submitted that one of the documents given to the petitioner, which is at page 102 in the compilation, is not legible. It is, no doubt, true that on the next page, the first line is missing. Similarly, on the bottom portion of the said document, writing is not very legible and this fact as such is not in dispute. It is also argued that at page 51, which is the copy of the report of the laboratory, rubber stamp at the bottom is not legible. In this connection, he has placed reliance upon the decision of the Division Bench of this Court reported in 1991(2) GLR 753, wherein this Court in para 3 has observed as under.:

"Learned Advocate for the petitioner submitted that it is imperative that the detaining authority must serve the grounds of detention which include also all the relevant documents which had been considered in forming the subjective satisfaction by the detaining authority before making the order of detention. He submitted that the detenu was given the list of documents accompanying the grounds of detention on which the detaining authority relied upon for making the impugned order as stated in the grounds of detention to enable the detenu to make an effective representation to the Advisory Board as well as to the detaining authority as mentioned in the grounds of detention, but the detaining authority failed to supply legible copy of the relevant document to the detenu which is given at page 195 of the compilation, which affected the detenu's important right of making an effective representation under Art.22(5) of the Constitution of India and, therefore, the order of detention is required to be quashed and set aside. He showed a xerox copy of the document

supplied at page 195 of the compilation. On perusing the document, it appears that the document at page 195 is the receipt issued by the `Gujarat Rajya Nagarik Purvatha Nigam Ltd.', which is a vital document, on which reliance is placed by the detaining authority. Looking to the document, it appears that it is illegible and the name of the payer on which the rubber stamp is applied and the contents of the said rubber stamp are not legible. Mr.Tripathi appearing on behalf of the detaining authority drew our attention to the affidavit filed on the aforesaid point, which is set out at para 12 of the affidavit-in-reply, the relevant part of which reads as under.:

"I submit that the petitioner has been supplied with the entire material relied upon by the detaining authority for the purpose of passing the detention order ... . In fact, the entire material has been given in order to enable the detenu to make effective representation. It is also absolutely wrong to say that some of the pages are not legible at all, viz. pages Nos.145, 147, 155, 157, 185 and all the receipts of Weigh Bridge, etc. since mere look at the copies supplied to the petitioner-detenu makes it clear that they are absolutely legible....."

The document at page 195 was shown to Mr.Tripathi and he fairly admitted that the said document is not legible."

#. In view of the fact that part of the document at page 101 is not legible, it can be presumed that the petitioner is denied his right to make effective representation. In that view of the matter and considering the judgment referred to above, this petition is allowed. The order of detention dated 12.8.2002 is quashed and set aside. The detenu Ramaben Nanjibhai Koli is ordered to be set at liberty forthwith if she is not required in connection with any other case. Rule is made absolute accordingly.

(P.B.Majmudar,J)
(pathan)